

Tentative Rulings for December 21, 2021
Department 54

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(03)

Tentative Ruling

Re: ***Cortina v. North American Title Co.***
Superior Court Case No. 07CECG01169

Hearing Date: December 21, 2021 (Dept. 54)
(If oral argument is requested, it will be heard at 8:30 by zoom)

Motion: Plaintiffs' Application for Writ of Attachment and Order
Permitting Discovery

Tentative Ruling:

To deny the application for a writ of attachment and order permitting discovery.
(Code Civ. Proc. §§ 481.010, *et seq.*)

Explanation:

Plaintiffs have failed to meet their burden of showing that attachment is proper here. First, plaintiff's application fails to list an amount to be attached, as required by Code of Civil Procedure section 484.020(b). It simply states that the amount to be attached is \$0.00, which is insufficient. (See Item 8 on Application for Right to Attach Order.) Since the application does not list an amount to be attached, it is defective, and the right to attach order must be denied for this reason alone.

Also, it appears that the reason that plaintiffs are seeking an attachment here has more to do with their desire to conduct discovery into defendant's assets than with the need to secure recovery on the pending judgment. While discovery is available where a writ of attachment issues, here plaintiffs are not even seeking to attach a specific amount, which suggests that they are more interested in conducting further discovery than in securing the amount of the judgment. An attachment should not issue for a purpose other than recovery on the claim on which the attachment is based. (Code Civ. Proc. § 484.090(a)(3).)

In addition, plaintiffs' claim is not based on a contract, as required under Code of Civil Procedure section 483.010(a). Plaintiffs prevailed only on their UCL claim, which was based on the unlawful and unfair violation of the Labor Code section regarding payment of overtime. However, UCL claims are not contractual, even if they are based on a Labor Code violation. (*Hodge v. Superior Court* (2006) 145 Cal.App.4th 278, 284-285.) Therefore, the UCL claim is not a proper basis for an attachment order. Without some claim based on a contract, plaintiff cannot obtain a writ of attachment.

Furthermore, attachment is improper here because the plaintiffs have already prevailed on their claim at trial, and they are awaiting entering a judgment in their favor. The attachment statute is only intended to cover prejudgment attachment orders. Post

judgment execution is covered by a completely different statutory scheme. (See Code of Civil Procedure § 699.010 *et seq.* re: enforcement of judgments by writ of execution.)

“In California, the procedures and grounds for obtaining orders for **prejudgment** writs of attachment are governed by California Code of Civil Procedure sections 481.010–493.060.” (*Blastrac, N.A. v. Concrete Solutions & Supply* (C.D. Cal. 2010) 678 F.Supp.2d 1001, 1004, emphasis added.) “Attachment is, of course, a prejudgment remedy; after final judgment, the plaintiff may, if necessary, proceed by way of execution.” (Law Revision Comments to Code Civ. Proc., § 484.010.) “Attachment is a prejudgment remedy that allows a creditor to have a lien on the debtor’s assets until final adjudication of the claim sued upon (see CCP § 481.010 et seq.).” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (2021), Attachment, § 9:853.)

“The primary purpose of the remedy of attachment is to allow unsecured creditors a procedure ancillary to their action by which to ensure that the alleged debtor’s assets are not dissipated *prior to the time the creditor can obtain and enforce the anticipated judgment on his claim.*” (North Hollywood Marble Co. v. Superior Court (1984) 157 Cal.App.3d 683, 690, internal citations omitted, italics added.) “Attachment is an ancillary or provisional remedy to aid the collection of a money demand by seizure of property *in advance of trial or judgment* as security for satisfaction of a judgment for the attaching party. (1 Witkin, Cal. Procedure (1954) p. 888.)” (Burke v. Superior Court of Sacramento County (1969) 71 Cal.2d 276, 279, fn. 3, italics added.)

Since plaintiffs have already gone to trial and prevailed on their claim, and they are on the (very protracted) verge of entering a judgment in their favor, it does not appear that attachment is a proper remedy at this stage of the litigation. Therefore, the court intends to deny the writ of attachment and request for discovery related to the attachment.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 12/15/2021
(Judge's initials) (Date)